

V

Case 4:12-cv-01683

WILLIAM STEPHENS

United States District Court
Southern District of Texas
FILED

HONORABLE JUDGE LYNN N. HUGHES

AUG - 1 2013 JULY 28, 2013

Dodd J. Bradley, Clerk, USDC

SECOND MOTION INVOKING MY RIGHT TO PROCEED PROSE UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND FARETTA V. CALIFORNIA 422 U.S. 806, 821, 95 S.Ct. 2525, 45 L.Ed 2d 562 (1975) I AM INVOKING MY RIGHT TO PROCEED PRO SE AND I DO NOT NEED AND DO NOT WANT ANY COUNSEL.

On 5/6/13 I filed a motion to proceed Pro Se. Then on June 15, 2013 I filed another motion to Proceed Pro Se @ Docket 31. I invoked my right to proceed Pro Se under Fretta V California and the Sixth Amendment.. On June 25, 2013. McCann and Gotro filed a Motion to withdraw and in support of my Motion to Proceed Pro Se.. On June 25, 2013. The AG's office filed a Motion to stop my appeal until it is determined WHO is my Attorney or if I will represent myself and if I will keep this writ.

On 5/11/12 Patrick F. McCann filed a Motion for Substitution of Counsel for my Article 64 Proceeding in State Court. The 180th District Court. At that time he was aware that I had a **COLLATERAL REVIEW PENDING IN STATE COURT AND [SHOULD] HAVE KNOWN THAT I COULD NOT BE IN FEDERAL COURT**. See Exhibit A... In Martel V. Clair No. 10-1265 Decided March 5, 2012. 565 U.S. ____ (2012) The S.Ct. states on page (3) Habeas Petitioners facing execution now receive as a matter of right counsel. See 3599(a)(2), and in multiple ways the statute aims to improve the quality of their representation. It provides them with more experienced counsel than 3006A demands. McCann and Gotro are SUPPOSE to be Experts in Federal Death Penalty Law.

On November 14th and 15th 2011. McCann and Gotro were appointed to represent me in my 28 USCS 2254 Writ. On January 23, 2012. McCann finally shows up. He knows nothing about my case. I have (5) Months to file my 2254 writ.. At docket 31 I file a motion to remove McCann. At 32 I file a motion for Equitable Tolling and at 33 I file a motion for reconsideration of stay of DNA Test. This is on the 4:11-mc-00293 docket... At docket 36 This court issues an order it states " William Irvin is a death row inmate. He commenced this case with a motion for appointment of Counsel on June 17, 2011. He has not yet filed a petition for writ of habeas corpus.

A PREVIOUS MOTION FOR AN ADMINISTRATIVE STAY INDICATED THAT IRVAN HAS A MOTION FOR [DNA] TESTING [PENDING] IN STATE COURT". THEN THE COURT STATES " IT IS ORDERED THAT counsel for the petitioner shall file a status report by April 16, 2012, ADVISING COURT OF (ANY) STATE COURT PROCEEDINGS.... At that time EVERYONE knew that I had COLLATERAL REVIEW PENDING IN STATE COURT. MY DNA MOTION FILED DECEMBER 5, 2005.. NOTE-Bracket's added by Petitioner.

On 5/16/12 McCann files a Motion for EQUITABLE TOLLING. In this motion McCann states that I lost 150 Day's. then 180 Day's. This motion

Is the worst motion that I have ever seen.(See Exhibit B) I received this motion from an attorney that I had never even heard of. He marked it like it is and told me that this motion would NEVER be granted. It is my belief that that was the whole purpose. It was not meant to be granted. It was to look as though he was TRYING to get my 2254 Writ Tolled, BUT if you look at 29 on the 4:11-mc-00293 docket. The AG's office Ellen Stewart-Klein states in response to stay in my DNA Motion. "BUT IRVAN IS MISTAKEN NO FEDERAL HABEAS PETITION HAS BEEN FILED. FURTHER, IRVAN'S MOTION IS MISPLACED AS THIS COURT CANNOT STAY THE FEDERAL STATUTE OF LIMITATIONS NOR DOES IT NEED TO AS IRVAN has a state DNA action currently tolling the limitations period... YET, THERE IS NOTHING PREVENTING IRVAN FROM FILING A STATE HABEAS PETITION. INDEED, THERE IS no case to stay as Irvan has yet to file his Federal Petition. And since there is no federal case (THERE IS NO PROBLEM WITH THE TWO FORUM RULE.) More over, the limitations period IS ALLREADY BEING TOLLED BY THE OUTSTANDING DNA PROCEEDINGS.

The court also told McCann and Gotro at 30. The time is TOLLED.
So why file a Equitable Motion ??? Did he not undersatnd the AG's office and Your Order ? I think he did and was trying to make me think he was asking for it to be tolled, but knew it was allready tolled by my DNA. Why not file a motion to Dismiss ? If he did not know that I should not of been in Federal Court and did not understand the order. Then he is incompetent and should not represent anyone in federal court. BUT I think he knew and understood it all. I believe that someone did not want me to stop my Federal appeal. I believe that I was being pushed thorugh. So, I could not go back and file anything in State court(See Docket 13 in the 4:12-cv-01683 docket) I was abandon in State court and my 11:071 Writ was denied because Danny Easterling withdrew in the wrong court and I did not know nor did the CCA.....That is why he would not let me tell him about my Maples Issue on October 12, 2012.

Then @ 46 The AG's office responds to the Equitable motion. They state "AS THE UNDERSIGHNED EXPLAINED IN HER PREVIOUS FILING, IRVAN HAS A STATE DNA ACTION CURRENTLY TOLLING THE LIMITATIONS PERIOD.... THEN THE JUDGE ORDERS" WILLIAM IRVAN HAS NOT FILED A FEDERAL HABEAS PETITION. IRVAN WANTS THIS COURT TO EQUITABLE TOLL THE ANTI TERRORISM AND EFFECTIVE DEATH PENALTY ACT'S ONE YEAR LIMITATIONS PERIOD (43) RESPONDANT STATES THAT, BECAUSE IRVAN IS CURRENTLY LITIGATING A CHALLENGE TO DNA EVIDENCE IN STATE COURT THE LIMITATIONS PERIOD (IS NOT RUNNING) Even after all of this McCann and Gotro still filed my 28 USCS 2254, when the court told them my time is not running. This shows total disregard for my life, and either they do not understand the LAW or just incompetent. Either way, they should not be my attorney's.

Then they tell me that they have found numerous thing's and they are my BEST Issues. Then do not file them. They file nothing on Brady.

I am asking this court to let me represent myself. AGAIN I AM INVOKING MY RIGHT TO PROCEED PRO SE. When this court makes me Pro Se. I will be filing a motion to dismiss without prejudice my 28 USCS 2254 Federal Petiton.(see docket 30)

I also filed a motion to remove McCann from my DNA issue. He can NOT

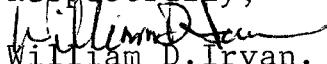
represent me in that proceeding. He filed his and Gotro's motion to this court and in so many word's stated that I am Guilty and for this court to Kill Me. He can not represent me in anything. The conflict is Huge between them and me. Gotro has not [EVER] responded to (19) of my letter's and McCann has not written me since November 21, 2012. And he lied to me in that letter. He did try to write me on June 21, 2013. But he enclosed someone elses Legal Document's in my letter and Mine in someone elses. I wrote him and told him this, but he never responded. See Docket 35 in the 4:12-cv-01683 docket. Also see docket 36 for letter from McCann on November 21, 2013.

McCann has not withdrawn in my DNA issue and I have filed another Grievance on him for not withdrawing and I have told Ms. Klein and the 180th that if they made any agreement's with he or Ms. Gotro. I am not in agreement with it. I state this because I found where the AG's office has now taken over the DNA and I was not told about it. On May 28, 2013 An Order Appointing PRO TEM was granted in the 180th District Court. It states " The court orders that the Harris County District Attorney and ALL Harris County Assistant Attorney's are RECUSED with respect to the above -caption cause and therefore disqualified from proceeding as attorney's for Harris County and the state in this matter.

It is ORDERED, pursuant to Tex. Code Crim. Proc art.2.07, that the office of the Attorney General of Texas and any Assistant Attorney General designated by the office of the Attorney general of Texas, is appointed District Attorney PRO TEM in this Cause. McCann nor Gotro told me anything about this. I do not trust them at all.

Your Honor, I am stuck in this cage and I have no contact with an attorney. I tryed to write my attorney's but as you see from the docket .They WILLNOT RESPOND. So, if I represent myself. I will know what is going on. As of right now. I have no idea what is going on in my 2254 writ or my DNA issue. I should not be in this situation. Will you PLEASE give me a chance to speak to you Via a Phone Call or Video confrence call from here. I need to know what is going on in my case and where I stand as to being Pro Se and "IF" I should be in federal court.

PETITIONER RESPECTFULLY PRAYS THAT THIS MOTION BE GRANTED.

Respectfully,

William D. Irvin.

CC

Houston Chronicle Lisa Falkenberg
Harris County District Clerk.

EXHIBIT A
An 1/889

EX PARTE
WILLIAM IRVAN

CAUSE NO. 864928
2012 MAY 11 AM 6:45

BY 5-11-12 §
CRIMINAL JUSTICE §
SERVICE

180TH DISTRICT COURT
HARRIS COUNTY, TEXAS

py

MOTION FOR SUBSTITUTION OF COUNSEL FOR ARTICLE 64 PROCEEDINGS

****WITH BOTH COUNSEL'S SIGNATURE****

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

This Motion for Substitution of Counsel is brought by Patrick F. McCann, Movant.

Movant requests the Court to substitute Patrick F. McCann, 909 Texas Ave. #205, Houston, Tx 77002 in place of Thomas Martin, 1018 Preston St., Houston, TX 77002 who is currently attorney of record for William Irvan herein. Movant is, along with co-counsel Casie Gotro, representing Mr. Irvan in a 28 U.S.C. Section 2254 death penalty habeas in the Southern District of Texas before the Honorable Lynn Hughes. Movant prays the Court grant the Motion for Substitution of Counsel.

Respectfully submitted,

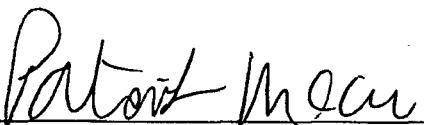
Patrick McCann

PATRICK F. MCCANN
TBA# 00792680
909 TEXAS AVE #205
HOUSTON, TEXAS 77002
(713) 223-3805
(713) 226-8097 FAX
ATTORNEY FOR DEFENDANT

RECODER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

CERTIFICATE OF SERVICE

I, Patrick F. McCann certify that on the 8 day of May 2012 a copy of the foregoing was hand-delivered/mailed to the District Attorney's office at 1201 Franklin, Houston, TX 77002.



Attorney for Defendant

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIAM IRVAN, *
Petitioner *
* Cause No. 4:11-mc-00293
RICK THALER, *
Respondent *

MOTION FOR EQUITABLE TOLLING

Petitioner by and through his attorney of record, brings this, his Motion for Equitable tolling. In support thereof he would respectfully show this Honorable Court the following:

I.

Subsequent to the filing of Mr. Irvin's state application under Article 11.071 for habeas relief in the 180th District Court of Harris County, his writ attorney, Mr. James Leitner, became first assistant district attorney at the Harris County District Attorney's Office. Mr. Danny Easterling was appointed to represent Mr. Irvin on his state habeas. Mr. Easterling attempted to withdraw due to his trial schedule and the complexity of Mr. Irvin's case in 2011. The record had already been forwarded to the Court of Criminal Appeals with the trial court's recommendations and findings. Thus the trial court, under Texas Rules as defined by the Court of Criminal Appeals, lacked the authority to remove writ counsel and appoint new ones. The CCA was informed about the attempt to withdraw and, after denying the writ on June 8, 2011, informed Mr. Easterling of his statutory obligation pursuant to 11.071 VACCP to seek appointment of federal counsel for Mr. Irvin in the United States Southern District.

Mr. Easterling did so on June 17 of 2011. The Court then appointed Jerome Godinich as writ counsel for the initial application pursuant to 28 USC Section 2254 and the relevant federal statutes entitling the condemned to appointed counsel. [See Court's order dated July 7, 2011] *Bucket No. ?*

Mr. Irvan objected, rather strenuously, disappointed and continued to seek other appointments[?] for appearance of counsel until the district court⁸ made it clear⁹ that there was no other attorney entitled to represent Mr. Irvan. Mr. Godinich did not file an application under section 2254 during his term of appointment, nor did he file any other motions other than a motion to withdraw in August of 2011. [See court's docket sheet] Docket NO. ?

No III. 005
 It does not appear that there was any other counsel appointed until the undersigned and his co-counsel were appointed in November 2011. [See court's docket sheet] While Mr. Irvan is certainly an energetic client, it does not appear that the time period from June 17 through November 14 should be held against him as he appeared to be fervently attempting to bring the matter of his representation before this Honorable Court. He has diligently sought the appointment of at least some counsel, though he certainly appears no happier with the undersigned counsel than Mr. Godinich. On his behalf therefore, the undersigned counsel respectfully prays that this Honorable Court will grant equitable tolling for the period from June through November. This time period spans exactly 150 days. One hundred fifty days is thus the period asked that this Honorable Court extend its AEDPA timeline under equitable principles. ^{is asked to} ^{after it is 150 days!}

??

IV.

Equitable tolling is appropriate when an extraordinary factor beyond the plaintiff's control prevents his filing on time. *See Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir.1998), *cert. denied*, ___ U.S. ___, 119 S.Ct. 1474, 143 L.Ed.2d 558 (1999) (Equitable tolling appropriate in "rare and exceptional circumstances" where equity demands it); *Coleman*, 184 F.3d at ^{incomplete cite} 402 (Equitable tolling is limited to circumstances where plaintiff is misled by defendant or ~~is prevented in some extraordinary way from asserting his rights~~); *Calderon v. United States Dist. Ct.*, 163 F.3d 530, 541 (9th Cir.1998) (Equitable tolling is appropriate if "extraordinary circumstances beyond a prisoner's control" prevent timely filing of § 2254 petition).

"The doctrine of equitable tolling preserves a plaintiff's claims when strict application of the statute of limitations would be inequitable." *Davis*, 158 F.3d at 810. "As a discretionary doctrine that turns on the facts and circumstances of a particular case, equitable tolling does not lend itself to bright-line rules." *Fisher*, 174 F.3d at 713. Instead, "we and the district court must examine each case on its facts to determine whether it presents sufficiently 'rare and exceptional' circumstances to justify equitable tolling ." *Id.* (citing *Davis*, 158 F.3d at 811). The need to adhere to these equitable precepts is heightened because "dismissal of a first habeas petition is a particularly serious matter," *Lonchar v. Thomas*, 517 U.S. 314, 324, 116 S.Ct. 1293, 1299, 134 L.Ed.2d 440 (1996), subject to constitutional challenge.

Mr. Irvan has diligently attempted to exercise his statutory and constitutional rights to the assistance of counsel. He has effectively had no counsel for the first ~~six months~~ ^{- he says 5 months earlier} of his AEDPA timeline. While the state of Texas may rationally argue that Mr. Irvan's attempts to interfere with the appointment of his counsel mitigate against him in this instance, the ^{higher} view of

?

!!

equity is that, however challenging a particular client may be, that does not remove the duty of an attorney to go forward on that client's case. When viewed in this light, the equitable principle that shines through is that Mr. Irvan, a condemned man desperate to be able to tell his side of the story, should not have the lapse of counsel from June through November counted against him.

The Petitioner respectfully asks for equitable tolling for 80 days thus making this initial habeas petition due on or before November 4.

Respectfully submitted,

s/
Patrick F. McCann
TBA 00792680
909 Texas Ave
Houston, Texas 77002
713-223-3805
713-226-8097 Fax

CERTIFICATE OF SERVICE

This is to certify that on May 16, 2012 a true and correct copy of the above and foregoing document was served on the State Attorney General's Office, PO Box 12548, Austin, Texas 78711.

/s _____
Patrick F. McCann

CERTIFICATE OF CONFERENCE

Counsel has attempted to reach the State Attorney General's Office by phone and was unavailable but believes that she would be opposed.

/s _____
Patrick F. McCann

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIAM IRVAN,
Petitioner

*

*

* Cause No. 4:11-mc-00293

*

RICK THALER,
Respondent

ORDER

IT IS HEREBY ORDERED that this motion and equitable tolling be granted and the new deadline for the writ is November 4, 2011 or the following date _____ that the court deems appropriate for equitable tolling. *2012!!*

PRESIDING JUDGE

DATE

EXHIBIT C

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
JULY 1 2013
CLERK'S OFFICE
JUDGE P. M. O'NEILL

vs.

THE STATE OF TEXAS

100% PAYMENT COURT

OF

HARRIS COUNTY, TEXAS

CAUSE NO. 064928

EXHIBIT D

SECOND MOTION ASKING THIS COURT TO REMOVE PATRICK F. MCCANN AND CASIE L. GOTRO FROM MY ART. 64. DNA MOTION-ISSUE OR APPOINT ME PRO SE.

HONORABLE JUDGE MARC BROWN

JULY 16, 2013

William Irvin comes before this court and makes his motion to remove Patrick F. McCann and Casie L. Gotro as his Attorney's in his Art. 64. DNA issue.

On July 16, 2013 said defendant filed a motion to remove attorney's from his DNA issue because they have LIED, not responded to defendant. Patrick McCann since November 21, 2013. Casie Gotro since May 2012. I have written them MANY letter's. All of which are in the Federal Docket at Case 4:12-cv-01683. Then they filed a motion to withdraw from my federal writ and told the Judge I was Guilty and to kill me. See motion in first motion to this court and my federal docket # 32.

They have told me that they were going to test the DNA and then told me that ~~they~~ were busy working on another case, when in fact what McCann was doing was ~~SHAD~~. He was filing Frivolous claims in Preston Hughes case, when he said that he could not work on my case. Get the DNA as he told me he was going to do. See Docket 36 in My Federal Writ.

I have filed a grievance on McCann on MAY 15, 2013 and I wrote both a letter telling them they were Discharged Pursuant to Rule 1:15. This is in the Harris County District Clerk's file with first motion and in the Federal Docket # 29. They CAN NOT BE MY ATTORNEY'S.

They hate me and I hate them. They failed to file what they told me they would file in my 2254 Federal writ and our CONFLICT IS TO LARGE TO EVER OVERCOME. They stated in their withdraw motion THEY DO NOT WANT TO REPRESENT ME.... PLEASE REMOVE THEM AND APPOINT JAMES M. LEITNER, SOMEONE FROM HIS OFFICE, BOB WICOFF OR AN ATTORNEY WHO TRULY KNOW'S DNA. AS I STATED IN MY FIRST MOTION. THIS COURT HAD APPOINTED THOMAS MARTIN AND FOR (3) YEARS HE BELIEVED I HAD A CHILD CASE. NOT JUST ONE CHILD (2) AND THAT HPD HAD MY DNA..... I DO NOT AND HAVE NEVER HAD A CHILD CASE AND I TOLD HIM TO LOOK IN MY 11:071 STATE WRIT WHERE JIM LEITNER FILED A MOTION TO COMPEL THE STATE TO LET US TEST THE DNA. JUDGE DEBRA MANTOOTH STRICKLAND DENIED THE MOTION. IT STATES THE DNA IS IN THE H/C DIST CLERKS VAULT AND 601 LOCKWOOD HOMICIDE VAULT... IT WOULD BE NICE TO HAVE AN EXPERT AS A DNA ATTORNEY.

Now I find out that either the Harris County District Attorney has ask to be recused or the AG's office has taken over my DNA issue. Patrick F. McCann nor Casie Gotro told me this. It was filed and ordered on May 28, 2013. I found out on July 16, 2013 from a friend who was looking at my docket to see if McCann withdrew. Why would the H/C District Attorney ask to be recused??? They just told us we could test the DNA. Has it been tested? Did it clear me? Since I do not have an attorney who will respond to me. I do not know this. So, if this court does not wish to remove Patrick F. McCann and Casie L. Gotro

I respectfully ask this court to appoint me Pro Se. I am the one who started this proceed ~~but~~ filing a Art.64 Motion to test the DNA on December 5, 2005. I am asking this court to Please remove said attorney's by August 9, 2013. and appoint one of the attorney's listed, an attorney who is an expert in DNA or make me Pro Se.

I AM NOT IN AGREEMENT WITH ANYTHING FILED OR AGREED TO BY PATRICK F. MCCANN CASIE GOTRO AND THIS COURT OR WITH THE ATTORNEY GENERALS OFFICE AND SAID ATTORNEYS OR ANYONE THAT THEY ASK TO REPRESENT ME. OR WITH THE DISTRICT ATTORNEYS OFFICE. THEY ARE NOT MY ATTORNEYS.

PATRICK F. MCCANN AND CASIE GOTRO ARE NOT MY ATTORNEYS. PLEASE REMOVE THEM FROM MY DNA ISSUE.

DEFENDANT PRAYS THIS COURT WILL GRANT THIS MOTION.

Respectfully,

William Irvan.

CC

Harris County District Clerk
U.S District Court Clerk 4:12-cv-01683
Attorney Generals office-Ellen Stewart - Klein
Houston Chronicle-Lisa Falkenberg

V

WILLIAM S STEPHENS

}

Case 4:12-cv-01683

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

Clerk of Court

July 28, 2013

AUG - 1 2013

David J. Bradley, Clerk of Court

Dear Clerk:

Please find a motion Invoking My Right To Proceed Pro Se. I am also enclosing (4) Exhibit's. It all totals (3) Pages for the Motion and (10) pages for the Exhibit's.

Please post them on said case.

Thank you for your help in this matter.

Respectfully,


William Irvan.



WILLIAM D. IRVAN 999472
Polunsky Unit
3872 FM 350 South
Livingston, Tx. 77351

United States Courts
Southern District of Texas
Ft. E.

AUG - 1 2013

David J. Bradley, Clerk of Court

U. S. DISTRICT COURT
Southern District of Texas
Houston Division
Houston Court
ATTN: Clerk of Court
515 Rusk
Houston, TX. 77002

LEGAL MAIL